

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CENGAGE LEARNING, INC.
(f/k/a THOMSON LEARNING, INC.)
PEARSON EDUCATION, INC.
JOHN WILEY & SONS, INC., and
THE MCGRAW-HILL COMPANIES, INC.,

Plaintiffs,

**AFFIDAVIT OF RICHARD
ESSIG**

-against-

07 Civ 8540 (CM)(THK)

BUCKEYE BOOKS,
USED BOOK EXCHANGE,
TEXTBOOKSRUS.COM., LLC, and
PHILIP SMYRES,

Defendants.

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RICHARD ESSIG, being duly sworn, deposes and states as follows:

1. I am the Vice President of Planning & Logistics of the Higher Education, International and Professional Group of Pearson Education, Inc. ("Pearson"), and I write this affidavit in support of plaintiffs' opposition to defendants' motion to dismiss for lack of personal jurisdiction. I have held the above title for approximately ten years.

2. Unless otherwise stated, the matters affirmed herein are within my personal knowledge and are true, or are based on documents or information from Pearson, in which case I believe them to be true.

3. Used Book Exchange ("UBX") and Buckeye Books ("Buckeye"), through Philip Smyres ("Smyres"), have been customers of Pearson since 1995 and 1996 respectively. I also understand that they are customers of the other plaintiffs in this lawsuit- John Wiley & Sons, Inc., Cengage Learning, Inc., and The McGraw-Hill Companies, Inc. Smyres is listed as the

owner and primary contact person of UBX and Buckeye according to Pearson's customer records. In addition to his control over UBX and Buckeye, Smyres also owns and operates an e-commerce company called Textbooksrus.com, LLC ("TRU"), which sells textbooks over the internet, apparently to consumers all across the United States. TRU has never been one of Pearson's customers. He also apparently runs and/or operates a business incorporated in New York which I describe in greater detail below.

4. In 2006, Pearson and some of the other plaintiffs in this lawsuit began to suspect that Smyres, through his companies, UBX, Buckeye, and TRU (collectively, the "defendants"), was unlawfully selling international edition (gray market) textbooks, and other unauthorized, including pirated textbooks. One of the facts that led to this conclusion was TRU's advertisement of its sales of gray market textbooks on its website. A copy of the relevant portion of the TRU website advertising the company's sales of gray market textbooks is attached hereto as Exhibit "A."

5. To investigate the possibility of pirated Pearson books being sold by Smyres and his e-commerce company, on September 20, 2006, I placed an order on the TRU e-commerce website for four separate titles from TRU and Philip Smyres (for a detailed account of the names of those titles and their copyright registration details, I respectfully refer this Court to paragraphs 45 and 46 of the Complaint). Copies of those titles were delivered to an address in New Jersey on September 23, 2006, and upon Pearson's analysis of the books that Smyres and TRU delivered, Pearson determined that the books were all pirated (i.e. counterfeit) versions of those titles, with the exception of the *Assessment Procedures for Counselors and Helping Professionals* title, which Pearson determined to be the only legitimate copy that TRU delivered.

6. To investigate the possibility of gray market Pearson books being sold by Smyres and his e-commerce company, TRU, on August 3, 2007, I placed an order on Smyres' and TRU's e-commerce website for three separately copyrighted titles: 1) *Organizational Behavior*, 2) *Microeconomics*, and 3) *Transport Processes and Separation Process Principles* (for a detailed account of the names of those titles and their copyright registration details, I respectfully refer this Court to paragraphs 47-49 of the Complaint). On August 8, 2007, copies of those titles were delivered to an address in New York (1767 Central Park Avenue, Suite 241, Yonkers, New York 10710), and upon Pearson's analysis of the books that Smyres and TRU delivered, Pearson determined that the books were all international edition (i.e. gray market) editions of the those titles. When I further inspected the copies of the above titles that TRU delivered, I discovered that Smyres and TRU had placed stickers bearing the name "Textbooks R Us" over the clearly printed territorial distribution restrictions on the books, thus disguising those sales restrictions from consumers. The place of manufacture of the above titles was also misrepresented and concealed by a false laser printed bar code that was placed over the Asian ISBN and bar code, along with a deceptive U.S. ISBN, which were actually the ISBNs assigned to the US editions of those works. Essentially, the books were made to appear to be legitimate U.S. editions of the books I ordered, when in fact they were low-cost international editions, not intended for sale in the United States. Copies of the shipping labels corresponding to the above transactions, reflecting that the books were delivered to an address in New York are attached hereto as Exhibit "B."

7. As part of Pearson's efforts to trace and investigate the illegal importations of pirated and international textbooks into the United States, Pearson subscribed to the services of

PIERS, an import/trade data-provision company that provides comprehensive data on international trade. Pearson's records under that subscription date back to February 2006.

8. Pearson's review of those reports show that Smyres and the other defendants in this action have imported at least sixty-six (66) large shipments of textbooks into the United States from countries in Asia which Pearson has found to be the source of many pirated and gray market textbooks currently being sold on the U.S. market. Other important facts that can be gleaned from the PIERS reports are:

- a) Of the shipments listed on the reports, Smyres, Buckeye Books and TRU were listed as the consignees on the sixty-six shipments.
- b) Many of the consignors are companies that Pearson knows to have engaged in acts of textbook piracy, and the distribution and exportation of pirated and gray market textbooks.
- c) Smyres often traveled to Asia and imported textbooks into the United States personally as consignor.
- d) Many of the deliveries were made to Smyres as the consignee at "2340 Wood Avenue, Columbus, Ohio 43212"- which is the same address as TRU.
- e) With respect to one shipment from the Educational Media Centre in India, Smyres is listed as the consignee, along with Buckeye and TRU. The address for both TRU and Buckeye is again listed as the same address as that of TRU- 2340 Wood Avenue, Columbus, Ohio 43212.

9. Most importantly, the PIERS reports reflect that Smyres, Buckeye Books and TRU make heavy and regular use of New York seaports when shipping illegal textbooks into the United States. The reports show that Smyres, Buckeye and TRU imported as many as ten (10)

shipments into New York seaports between late February 2007 to June 2007 alone, en route to Ohio, mostly delivered to TRU's 2340 Wood Avenue address. Those ten shipments amounted to approximately 27,940 kilograms, or nearly 7,000 kilograms per month, which equates to approximately 28,000 books imported into New York over a four month period. This is especially surprising given that Smyres, Buckeye and UBX are customers of Pearson and the other plaintiffs, and should have no need to purchase their stock from such dubious sources. Copies of the relevant portions of the above-referenced PIERS reports are attached hereto as Exhibit "C."

10. One of the ten shipments into New York is consigned to a company called BookDogBooks, LLC ("BDB"). BDB's address, according to the PIERS reports, is the same as TRU, and further investigation has found that Philip Smyres, UBX and TRU are the owners and registrants of BDB and its website. Copies of BDB's company and website registration information, as listed on the Ohio Secretary of State website and on GoDaddy.com, which reflects that TRU and Smyres are the registrants of BDB and its website, are attached hereto as Exhibit "D."

11. Since the defendants filed their motion to dismiss in this action, I have since discovered that UBX, Smyres and TRU own and operate a textbook sales company in New York- another fact involving the State of New York that I understand defendants have not mentioned to this Court. The facts relating to that discovery are as follows:

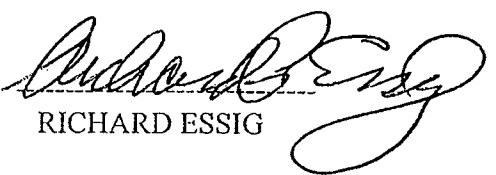
12. In September 2006, one of Pearson's field representatives entered a small store on Lexington Avenue in New York City, near Baruch College. The storefront advertised the sale of books at up to 50% off. The Pearson field representative reported to me that the store, which was called Textbooksdepot L&M, Inc., ("Textbooksdepot") was selling international edition

textbooks and what appeared to be brand new US edition textbooks, at a suspiciously low price.

Soon thereafter, another Pearson field representative learned that Textbooksdepot was headquartered in Queens County, New York, with a street address in Queens, New York, trading as Textbooksdepot L&M, Inc.

13. When defendants filed their motion to dismiss, I investigated Textbooksdepot's website, www.textbooksdepot.com, and discovered that TRU controls that New York-based company, as it clearly states on the site, "Textbooksrus.com reserves the right to refuse service to anyone." It also states that "Textbooksdepot.com and Customer consent to the exclusive jurisdiction and the venue of the State Courts of the State of New York to resolve any dispute between them related hereto, and the parities waive all rights to contest this exclusive jurisdiction and venue of such Courts." Further review of the Textbooksdepot website and other details about Textbooksdepot reflect that the business offers books tailored to students' curriculums at Baruch College and Pace University in New York, and that it is owned by Smyres and TRU (as described above). Copies of the relevant portions of the Textbooksdepot website, and other materials showing that the company is incorporated in the State of New York, owned by TRU and Smyres, and that it is actively recruiting in New York, are attached hereto as Exhibit "E."

14. After a thorough review of the orders I placed on Pearson's behalf, and the other facts of this case, including the PIERS evidence of the numerous shipments in to New York seaports, and the evidence surrounding Textbooksdepot in New York, it is clear that defendants are using New York as an essential hub for their illegal textbook piracy activities.



RICHARD ESSIG

Sworn to before me this the
1st day of November, 2007



Ellen M. Morrison

NOTARY PUBLIC

ELLEN M. MORRISON
Notary Public, State of New Jersey
No. 2298335
Qualified in Bergen County
Commission Expires March 26, 2008